IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 5, 2008 Session

JERRY GONZALEZ v. STEVE ARMISTEAD ET AL.

Appeal from the Chancery Court for Wilson County
No. 01178 C. K. Smith, Chancellor

No. M2006-02643-COA-R3-CV - Filed April 7, 2008

Plaintiff Jerry Gonzalez sued the Wilson County Road Commission and the road superintendent seeking an order requiring the county to maintain Jay Bird Lane. The trial court granted summary judgment for Mr. Gonzalez. The defendants appeal. Finding that this case moot and that Mr. Gonzalez lost his standing, we vacate the trial court's order and remand with instructions to dismiss the case.

Tenn R. App. P.3 Appeal as of Right; Judgment of the Chancery Court Vacated and Remanded

ANDY D. BENNETT, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Michael Ray Jennings, Lebanon, Tennessee, for the appellants, Steve Armistead and Wilson County Road Commission.

Jerry Gonzalez, Murfreesboro, Tennessee, for the appellee, Jerry Gonzalez.

OPINION

This is the second case involving Jay Bird Lane, sometimes known as Nokes Drive, to arrive before this court in recent memory. In 2001, the Court of Appeals issued a memorandum opinion[1] in *Harper v. Sloan*, No. M2000-01104-COA-R3-CV, 2001 WL 242557 (Tenn. Ct. App. Mar. 13, 2001), agreeing with the trial court's determination that Jay Bird Lane was a public road. On May 25, 2001, plaintiff Jerry Gonzalez filed this action against Wilson County Road Superintendent Steve

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[1] Pursuant to Court of Appeals Rule 10(b), a memorandum opinion may be issued when a formal opinion will have no precedential value. A memorandum opinion cannot be cited or relied upon for any reason in a subsequent unrelated case.

Armistead[2] in the Chancery Court for Wilson County to force the Wilson County Road Department to maintain Jay Bird Lane. When the complaint was filed, Mr. Gonzalez owned a lot in the Kaiser Subdivision adjacent to Jay Bird Lane. He alleged that it was "difficult for fire trucks and police cars to pass due to rocks protruding up from the center of the road and tree branches overhanging the dimensions of the road. The road also regularly floods during even moderate rain showers." On November 20, 2006, the trial court entered an order granting Mr. Gonzalez's Motion for Summary Judgment. The court directed Superintendent Armistead "to determine what needed to be done to put the road known as Jay Bird Lane or Nokes Drive in a safe condition and a reasonable time period within which to do it and to submit that to the Wilson County Road Commission. Defendant Wilson County Road Commission is directed to take the necessary action based on Mr. Armistead's report within a reasonable period of time." The defendants appeal.

The defendants maintain that this lawsuit is now moot because Mr. Gonzalez has sold the property abutting Jay Bird Lane. We agree. Mr. Gonzalez admitted in his brief and in oral argument that he has sold his property that abutted Jay Bird Lane. The sale of the property raises both standing and mootness issues. Standing deals with the appropriateness of a party to maintain an action. Mootness deals with the timing of an action. "To establish standing, a plaintiff must show: (1) that it has sustained a distinct and palpable injury, (2) that the injury was caused by the challenged conduct, and (3) that the injury is one that can be addressed by a remedy that the court is empowered to give." *SunTrust Bank, Nashville v. Johnson*, 46 S.W.3d 216, 222 (Tenn. Ct. App. 2000). An abutting landowner has a greater interest in a road than a member of the general public. *Knierim v. Leatherwood*, 542 S.W.2d 806, 810 (Tenn. 1976). Once the property was sold, however, Mr. Gonzalez no longer had a distinct and palpable injury that could sustain this legal action. He lost his personal stake in the outcome.

Similarly, the sale of the property renders the controversy between Mr. Gonzalez and the county a thing of the past. A case that no longer presents a present, live controversy has lost its justiciability and is moot. *McIntyre v. Traughber*, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994). Consequently, "[a] case will generally be considered moot if it no longer serves as a means to provide relief to the prevailing party." *Id.* "Determining whether a case is moot is a question of law." *Alliance for Native American Indian Rights in Tennessee, Inc. v. Nicely*, 182 S.W.3d 333, 338-39 (Tenn. Ct. App. 2005). Cases must remain justiciable throughout the entire course of the litigation, including the appeal. *McIntyre*, 884 S.W.2d at 137. A court decision in his favor will no longer benefit Mr. Gonzalez.

Mr. Gonzalez argues that two exceptions to the mootness doctrine apply. The exceptions involve (1) issues of great public interest and importance to the administration of justice, and (2) issues capable of repetition yet evading review. *Id.* "Decisions concerning whether to take up cases that fit into one of the exceptions to the mootness doctrine are discretionary with the appellate courts." *Id.* On this record, we find no basis to believe that this is a matter of great public interest and important to the administration of justice. Similarly, while the issue may be capable of

[2]Mr. Gonzalez later added the Wilson County Road Commission as a party defendant.

repetition, we find no reason to be concerned that it will continue to evade review. A party "requesting a court to invoke the exception must demonstrate (1) a reasonable expectation that the official acts that provoked the litigation will occur again, (2) a risk that effective judicial remedies cannot be provided in the event that the official acts reoccur, and (3) that the same complaining party will be prejudiced by the official act when it reoccurs." *Alliance for Native American Indian Rights*, 182 S.W.3d at 340 (footnotes omitted). Such a demonstration has not been made in this case. Therefore, this matter does not fall within the exceptions to the mootness doctrine put forth by Mr. Gonzalez, and we decline to address the merits of the case.

"The ordinary practice in disposing of a case that has become moot on appeal is to vacate the judgment and remand the case with directions that it be dismissed." *McIntyre*, 884 S.W.2d at 138; *See also Alliance for Native American Indian Rights*, 182 S.W.3d at 339. Seeing no reason to depart from the ordinary practice, we hereby vacate the trial court's judgment and remand the matter to the trial court with instructions to dismiss the case.

Costs of appeal are assessed against the appellee, Mr. Gonzalez, and his surety, for which execution may issue, if necessary.

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ANDY D. BENNETT, JUDGE